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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,863	06/16/2006	Masamichi Kaneko	1034185-000068	8663
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EXAMINER				
DEMEREE, CHRISTOPHER R				
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE		DELIVERY MODE		
03/17/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
offserv@bipc.com

### Office Action Summary

**Application No.**

10/542,863

**Applicant(s)**

KANEKO, MASAMICHI

**Examiner**

CHRISTOPHER DEMEREE

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess, III et al. (US 6131806 A; hereinafter Hess) in view of Laciamera et al. (US 6279779 B1; hereinafter Laciamera).

Regarding claims 2, 3 and 7, Hess teaches a dispensing structure incorporating a valve containing fitment for mounting to a container comprising a cap (478) on a packaging container having a surface tilted at least forward on the front side of the top part and APLH sealed by film on said tilted surface (see Figures 21 and 22), and a spout portion (348) of a cylindrical shape integrally molded with the flange and cut approximately at an angle so as to be upright substantially. Hess lacks a spout closure comprising a movable ring for piercing said film seal of the closure.

Laciamera discloses a closable opening device for sealed packages of pourable food products comprising a cylindrically shaped movable ring (18) and a spout portion (15) integrally molded with a flange (19), and a removable cap (17); said movable ring and said cap rotate together as a unit, the movable ring possessing a lower end portion (55) cut at an angle to form a cutting part which cuts a film seal when the cap and the movable ring are rotated to provide access to an interior of the packaging container

(Column 7 lines 20-25). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to replace Hess's closure with Laciacara's closure in order to provide a hermetically sealed container that also provides tamper-proof functionality (Laciacara; Col 7 lines 1-5). Examiner notes that it would be obvious to provide this type of closure for any gable topped dispensing carton with a substantially upright spout in one of the slanted gable walls.

Regarding claims 4 and 5, Hess, as modified above, teaches a container wherein said movable ring comprises a guide groove (Laciacara; 47) in the inner circumference surface of the pouring spout part and a guide boss (Laciacara; 26) in the outer circumference surface of the movable ring so that the movable ring can move vertically when rotating with the rotation of the cap and wherein the position of the guide groove when completing the rotation is lower than that of the guide groove when starting the rotation (Laciacara; Col 7 lines 5-10).

Regarding claim 6, Hess, as modified above, teaches a container comprising a tamper-proof part righting against said flange part, wherein said rotation assist part engages with said tamper-proof part prior to opening so as to be disengaged easily by means of the cap rotation (Laciacara; Col 7 lines 1-5).

### ***Response to Arguments***

3. Applicant's arguments, see Pages 6-10, filed 12/17/2009, with respect to the rejection(s) of claim(s) 2-6 under USC 102(b)-- Hess have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further

consideration, a new ground(s) of rejection is made in view of USC 103(a)—Hess in view of Laciacara.

4. Applicant's arguments with respect to claims 2-6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782